

Office of the Secretary, Education

§ 33.18

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ may not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department, including in the offices of either the investigating official or the reviewing official.

(Authority: 31 U.S.C. 3809(l)(2))

§ 33.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

(Authority: 31 U.S.C. 3803(g)(1)(A))

§ 33.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. That motion must be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) The motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or the objections are deemed waived.

(d) The affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of those facts. It must be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall not proceed further in the case until he or she resolves the matter of disqualification in

accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case must be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Department head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

(Authority: 31 U.S.C. 3803(g)(2)(G))

§ 33.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative (as defined in § 33.2);

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery under § 33.21;

(d) Agree to stipulations of fact or law, which must be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(Authority: 31 U.S.C. 3803(g) (2) (E), (F), (3)(B)(ii))

§ 33.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Disqualify a non-attorney representative (designated as described in the § 33.2 definitions of "representative") if the ALJ determines that the representative is incapable of rendering reasonably effective assistance;

(3) Continue or recess the hearing in whole or in part for a reasonable period of time;